



[6570-01-P]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities; Comment Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Equal Employment Opportunity Commission (EEOC or Commission) announces that it intends to submit to the Office of Management and Budget (OMB) a request for reinstatement without change of the information collection described below. The Commission is seeking public comments on the proposed reinstatement.

DATES: Written comments on this notice must be submitted on or before [INSERT DATE 60 DAYS AFTER PUBLICATION DATE].

ADDRESSES: You may submit comments using any of the following methods – please use only one method:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions on the website for submitting comments.

Mail: Comments may be submitted by mail to Bernadette B. Wilson, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street, NE, Washington, DC 20507.

Fax: Comments totaling six or fewer pages can be sent by facsimile (“fax”) machine to (202) 663-4114 (This is not a toll-free number.) Receipt of fax transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat

staff at (202) 663-4070 (voice) or (800) 669-6820 (TTY). (These are not toll-free telephone numbers.)

Instructions: All comments received must include the agency name and docket number. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. However, the EEOC reserves the right to refrain from posting libelous or otherwise inappropriate comments, including those that contain obscene, indecent, or profane language; that contain threats or defamatory statements; that contain hate speech directed at race, color, sex, national origin, age, religion, disability, or genetic information; or that promote or endorse services or products.

Although copies of comments received are usually also available for review at the Commission's library, given the EEOC's current 100% telework status due to the covid-19 pandemic, the Commission's library is closed until further notice. Once the Commission's library is re-opened, copies of comments received in response to the proposed rule will be made available for viewing by appointment only at 131 M Street, NE, Suite 4NW08R, Washington, DC 20507, between the hours of 9:30 am and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Kathleen Oram, Assistant Legal Counsel, (202) 663-4668, or Savannah Marion Felton, Senior Attorney, (202) 663-4909, Office of Legal Counsel, 131 M Street NE, Washington, DC 20507. Requests for this notice in an alternative format should be made to the Office of Communications and Legislative Affairs at 1-800-669-4000 (voice), 1-800-669-6820 (TTY), or 1-800-234-5122 (ASL Video Phone).

SUPPLEMENTARY INFORMATION: The Age Discrimination in Employment Act (ADEA) allows for individuals to waive rights and claims protected under the Act, provided certain circumstances are met; particularly that the waiver is knowing and voluntary. In order for an

individual's waiver in connection with a program to be considered knowing and voluntary, the employer must inform the individual in writing in a manner calculated to be understood by the average individual eligible to participate, as to (i) any class, unit, or group of individuals covered by such program, any eligibility factors for such program, and any time limits applicable to such program; and (ii) the job titles and ages of all individuals eligible or selected for the program, and the ages of all individuals in the same job classification or organizational unit who are not eligible or selected for the program. The EEOC's regulations clarify that the relevant section of the ADEA addresses two principal issues: to whom information must be provided, and what information must be disclosed to such individuals. The purpose of the informational requirements is to provide an employee with enough information regarding the program to allow an employee to make an informed choice whether or not to sign a waiver agreement. The employer does not provide this information to the EEOC; the ADEA and the EEOC's regulation solely require that the employer provide this information to any employee it would apply to, and not to the Federal government.

The EEOC, in accordance with the PRA and OMB regulation 5 CFR § 1320.8(d)(1), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the EEOC to assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public to understand the EEOC's information collection requirements and provide the requested data in the desired format. The EEOC is soliciting comments on the information collection that is described below. The EEOC is especially interested in public comment that will assist the EEOC in the following: (1) Evaluating whether the collection of information is necessary for the proper performance of the Commission's functions, including whether the

collection has practical utility; (2) Evaluating the accuracy of the Commission's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) Enhancing the quality, utility, and clarity of the information to be collected; and (4) Minimizing the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Please note that written comments received in response to this notice will be considered public records.

Overview of this Information Collection:

Collection Title: Waivers of Rights and Claims Under the ADEA; Informational Requirements.

OMB Number: 3046-0042

Type of Respondent: Business, state or local governments, not for profit institutions.

Description of Affected Public: Any employer with 20 or more employees that seeks waiver agreements in connection with an exit incentive or other employment termination program.

Number of Respondents: 2,425

Burden Hours per Respondent: 16.19 hours

Total Annual Burden Hours: 39,260.75

Number of Forms: None.

Abstract: The EEOC enforces the Age Discrimination in Employment Act (ADEA) which prohibits discrimination against employees and applicants for employment who are age 40 or older. The Older Workers Benefit Protection Act (OWBPA), enacted in 1990, amended the ADEA to require employers to disclose certain information to employees (but not to the EEOC) in writing when they ask employees to waive their rights under the ADEA in connection with an

exit incentive program or other employment termination program. The regulation at 29 CFR § 1625.22 reiterates those disclosure requirements.

Burden Statement:

In 2016, the EEOC conducted a limited survey as the foundation for estimating the burden hours per Respondent. The goal of the survey was to more accurately capture the actual costs of creating and distributing ADEA waivers and to better understand what type of employees were involved in this process.

For the current 2020 submission, the EEOC will rely again on this 2016 estimate of burden hours per respondent. Due to concerns about data quality given the current COVID-19 pandemic, and in accordance with OMB guidance memo M-20-16, the EEOC does not intend to conduct a new limited survey to re-estimate burden hours per respondent at this time.

Based on data collected from employers participating in the 2016 limited survey, EEOC learned that the senior human resource managers and legal counsel bear the most significant brunt of the paperwork and human capital burden in drafting and distributing the waivers to employees. The burden hours for the creation of the ADEA waiver are estimated to be 8.25 per employer.

Burden hours for the distribution of the ADEA waiver are estimated to be 7.94 per employer, for a total of 16.19 hours per employer.

The total annual burden hours is calculated by multiplying the number of Respondents by the burden hours per Respondent [$2425 \times 16.19 = 39,260.75$].

TABLE 1: <u>Computations related to preparing and drafting ADEA waiver burden estimate*</u>				
	<u>WAGE RATE (HOUR)¹</u>	PROJECTED HOURS PER EMPLOYER	COST PER FIRM	TOTAL COST
Number of Respondents: 2425				
CLERICAL STAFF	\$18.69	0.11	\$2.06	\$4,985.56
SENIOR HUMAN RESOURCE MANAGERS	\$54.47	0.26	\$14.16	\$34,343.34
INTERNALCORPORATE LEGAL COUNSEL	\$58.13	2.23	\$129.63	\$314,352.51
EXTERNAL CORPORATE LEGAL COUNSEL	\$58.13	2.00	\$116.26	\$281,930.50
CHIEF EXECUTIVE OFFICERS	\$50.47	0.12	\$6.06	\$14,686.77
COMPUTER SPECIALIST (IT PROFESSIONAL)	\$25.70	0.42	\$10.79	\$26,175.45
HUMAN RESOURCE SPECIALIST	\$29.27	1.61	\$47.12	\$114,277.40
PARALEGAL	\$24.49	1.50	\$36.74	\$89,082.38
SUB TOTAL	\$319.35	8.25	\$362.82	\$879,833.89
*Totals may not sum due to rounding.				

¹ Wage hour rates listed in first column are based on 2018 Median Pay for the occupation indicated and were obtained online from the U.S. Dept. of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook, <http://www.bls.gov/ooh/>. Accessed April 8, 2020.

TABLE 2: Computations related to distributing ADEA waiver burden estimate**				
	WAGE RATE (HOUR) ²	PROJECTED HOURS PER EMPLOYER	COST PER FIRM	TOTAL COST
Number of Respondents: 2425				
HUMAN RESOURCE SPECIALIST	\$29.27	0.27	\$7.90	\$19,164.53
CLERICAL STAFF	\$18.69	0.5	\$9.35	\$22,661.63
SENIOR HUMAN RESOURCE MANAGERS	\$54.47	0.85	\$46.30	\$112,276.29
INTERNALCORPORATE LEGAL COUNSEL	\$58.13	2.08	\$120.91	\$293,207.72
EXT CORPORATE LEGAL COUNSEL	\$58.13	2	\$116.26	\$281,930.50
PARALEGAL	\$24.49	1.5	\$36.74	\$89,082.38
PAYROLL SPECIALIST	\$19.02	0.2	\$3.80	\$9,224.70
ADMINISTRATIVE SERVICES MANAGER	\$46.24	0.27	\$12.48	\$30,275.64
DEPARTMENT EXECUTIVE	\$50.47	0.27	\$13.63	\$33,045.23
SUB TOTAL	\$358.91	7.94	\$367.37	\$890,868.61
**Totals may not sum due to rounding.				

Per Table 1 and 2 above, EEOC found that the approximate cost of preparing the ADEA waiver notice is \$362.82 per employer and the approximate cost of distributing the ADEA waiver notice is \$367.37 per employer. The total per employer cost is therefore \$730.19. For all 2,425 employers who are projected to have reductions in force and request waiver notices, the total

² Ibid.

preparation cost is \$879,833.89, and \$890,868.61 for distribution. The total cost for all 2,425 employers is \$1,770,702.50 Table 1 reflects the calculation of the costs of creating the ADEA waiver and Table 2 reflects the calculation of the costs of distribution of the ADEA waiver.

For the Commission.

Janet L. Dhillon,

Chair.

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